FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT INDIANA SPECIAL EDUCATION AFTER IDEA REAUTHORIZATION

BACKGROUND AND PURPOSE OF FAQ

The reauthorized *Individuals with Disabilities Education Act* (known as the *Individuals with Disabilities Education* ***Improvement*** *Act* or IDEIA) was signed into law on December 3, 2004. The law takes effect on July 1, 2005, except for provisions in the law pertaining to highly qualified special education teachers.

Indiana's special education rules, promulgated at 511 IAC 7-17 through 7-31 (commonly known as Article 7), will not be amended by the Indiana State Board of Education to reflect, in whole or in part, the changes in IDEIA until the federal regulations are promulgated.

Nevertheless, on July 1, 2005, local educational agencies (LEAs) will have to comply with provisions in IDEIA that either:

(1) Impose a requirement that is absent from Article 7 or
(2) Impose a higher requirement than what is currently included in Article 7.

When Article 7 imposes a higher requirement than what is required by IDEIA, LEAs will continue to implement the Article 7 requirement until the Article 7 requirement is amended. The purpose of this frequently asked questions (FAQ) document is to assist LEAs in knowing when to implement IDEIA requirements or Article 7 requirements.

QUESTIONS

Questions Regarding IDEIA Definitions

Q1: IDEIA excludes a medical device that is surgically implanted (e.g., a cochlear implant) from the definitions of assistive technology device and related service. Article 7's definitions of assistive technology and related service do not exclude surgically implanted devices. Therefore, are surgically implanted devices excluded in Indiana?

A: Although Article 7 does not specifically exclude surgically implanted devices from the definitions of assistive technology device, assistive technology service or related service, if a device must be "surgically implanted," then it constitutes a medical service that is not a required related service to be provided at no cost to the parent. *See*, 511 IAC 7-28-1(e), which states that medical services for the purpose of diagnosis and evaluation shall be considered related services *only if* necessary for diagnosis and evaluation of a medically related disability and provided by a physician with an unlimited license to practice medicine. By definition, if something is something is "surgically implanted," it must be done by a physician. Hence, it is an excluded "medical service."

Q2: Did IDEIA change the definition of highly qualified teacher, contained in the *No Child Left Behind Act of 2001* (NCLB), for special education teachers?

A: Please refer to the Indiana Department of Education, Division of Exceptional Learners' Highly Qualified FAQ document at the following website address for a thorough discussion of what is required by NCLB and IDEIA to be a highly qualified special education teacher: http://doe.state.in.us/exceptional/speced/whatsnew.html.

Questions Regarding Private Schools or Facilities

Q3: Under IDEIA, is the LEA where the child resides or the LEA where the private school is located responsible for providing services to students with disabilities enrolled by their parents in private schools?

A: IDEIA makes it clear that the LEA responsible for providing services is the LEA where the private school is located. 20 U.S.C. § 1412(a)(10)(A)(i). This change is effective on July 1, 2005.

Q4: How did IDEIA change the requirement that LEAs consult with private schools?

A: Public schools must continue to consult with representatives of private schools (including home schooled students with disabilities) in a timely and meaningful way. However, IDEIA requires that the consultation include *parents of parentally placed private school students during the design and development of special education and related services for children.* 20 U.S.C. § 1411(a)(10)(A)(iii). The consultation process must also include:

- The child find process and how parentally placed private school students suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
- The determination of how the proportionate amount of federal funds available to serve parentally placed private school students with disabilities, including how the amount was calculated.
- The consultation process among the LEA, the private school officials, and representatives of parents of privately placed students, including how the process will operate throughout the school year to ensure that parentally placed private school students identified through the child find process can meaningfully participate in special education and related services.
- How, where, and by whom special education and related services will be provided for private school students, including a discussion of the types of services, and how services will be apportioned if insufficient funds.[1]

[1] 511 IAC 7-19-1(f) and (g) require the CCC to meet to discuss the services to private school students with disabilities. 511 IAC 7-19-1(a) applies the rule to all students with disabilities unilaterally enrolled in private schools. Although 511 IAC 7-19-1(c), (j), and (k) describe the proportionate amount requirements, schools must make services available to all private school students, even if expending more than the proportionate amount.

- How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services, the LEA shall provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract .

20 U.S.C. § 1412(a)(10)(A)(iii)(I) – (V).

Q5: IDEIA states that LEAs must obtain a "written affirmation" signed by the representatives of the private schools. What must this written affirmation include?

A: Federal regulations *may* provide additional guidance regarding written affirmations. However in the meantime, it is advisable for written affirmations to include statements that the consultation was timely, meaningful and addressed all of the issues set forth in the answer to Q4 above. *See*, 20 U.S.C. § 1412(a)(10)(A)(iii)(I) – (V). The representatives of the private schools must sign the written affirmation. If no written affirmation is forthcoming within a reasonable amount of time, the LEA must forward documentation of the consultation process to the Indiana Department of Education's Division of Exceptional Learners. 20 U.S.C. § 1412(a)(10)(A)(iv).

Q6: IDEIA allows a private school to file a complaint with the Indiana Department of Education regarding an LEA's alleged failure to adequately engage the private school in the consultation process. Is there a procedure for filing this complaint?

A: Yes. Private schools should use the complaint process set forth at 511 IAC 7-30-2.

Q7: IDEIA allows a private school that is dissatisfied with the Indiana Department of Education's complaint decision to seek review from the Secretary of the United States Department of Education. Is Secretarial review available for other types of complaints filed under 511 IAC 7-30-2?

A: At this time, there is no clear answer to this question. Federal regulations will need to address whether Secretarial review of complaints – eliminated in 1999 – will be restored for all IDEIA complaints or reserved only for private school complaints.

Q8: IDEIA makes it discretionary for an independent hearing officer or a judge to reduce or deny a claim for reimbursement by a parent in three instances. Is this change in the law effective on July 1st?

A: No. It is true that IDEIA makes it discretionary to reduce or deny claims for reimbursement in three instances.[2] However, until Article 7 is amended, 511 IAC 7-19-2(e) precludes a hearing officer or the court from reducing or denying reimbursement if the failure to provide notice is the result of, among other things, the parent's inability to read or write in English or if providing the notice would result in physical or emotional harm to

[2] The three instances listed in IDEIA are: (1) the parent failed to provide the requisite notice of the unilateral enrollment of the student in a private school; (2) where the parent is illiterate or cannot write in English, or (3) where providing such notice would likely result in emotional or physical harm to the student. 20 U.S.C. §1412(a)(10)(C)(iv)(II).

the student. 511 IAC 7-19-2(d) describes the situations in which the hearing officer and the court have discretion to reduce or deny the reimbursement.

Questions Regarding Program Planning and Evaluation

Q9: IDEIA eliminated the requirement that LEAs implement a comprehensive system of personnel development (CSPD). Does this mean that LEAs are no longer required to submit annual CSPD reports and quarterly data to the Division?

A: Until Article 7 is amended to reflect this change, LEAs must continue to implement a CSPD as required by 511 IAC 7-20-3. Likewise, annual CSPD reports and quarterly data must continue to be submitted to the Division.

Q10: IDEIA prohibits LEA personnel from requiring a student to obtain a prescription for a substance covered under the Controlled Substances Act (20 U.S.C. § 801) as a condition of attending school. Is this change effective on July 1st?

A: Yes. Effective July 1, 2005, LEAs are prohibited from requiring a student to obtain a prescription drug as a condition of attending school, receiving an educational evaluation under 511 IAC 7-25, or receiving special education or related services. 20 U.S.C. § 1412(a)(25)(B). Nothing prevents LEA personnel from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance or behavior in the classroom or school regarding the need for evaluation for special education and related services. 20 U.S.C. § 1412(a)(25)(B).

Q11: IDEIA requires LEAs to use universal design principles, to the extent feasible, when developing and administering district-wide assessments. What are universal design principles?

A: The IDEIA borrows the definition for "universal design" from the *Assistive Technology for Individuals with Disabilities Act,* specifically 29 U.S.C. § 3002(19). The term "universal design" means a concept or philosophy for designing or delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

Questions Regarding Procedural Safeguards

Q12: Will the Notice of Procedural Safeguards (NOPS) be amended to reflect the changes to mediation and due process procedures contained in IDEIA?

A: Yes. The Division has prepared an addendum to the NOPS that substantially changes the sections in the NOPS titled ***MEDIATION*** and ***DUE PROCESS HEARINGS, APPEALS, COURT ACTIONS, and ATTORNEY FEES.*** The Division will not update the entire NOPS until final federal regulations interpreting IDEIA are promulgated. Until that time, the addendum is part of the formal NOPS, and LEAs must distribute the NOPS addendum whenever it distributes the NOPS to parents. A copy of the addendum is available at the following website:
http://doe.state.in.us/exceptional/speced/dueprocess.html

Q13: IDEIA states that the NOPS no longer has to be provided to the parent upon notification of each case conference committee (CCC) meeting or for reevaluations. Can my LEA stop providing the NOPS at these times?

A: No. Until Article 7 is amended to reflect the IDEIA provision, LEAs must continue to provide the NOPS at the seven events identified in 511 IAC 7-22-1(d) (initial referral, notification of CCC meeting, reevaluation, request for due process hearing, date of the decision to place a student in an interim alternative educational setting, date on which expulsion charges are filed, and notification of proposed placement or denial of placement).

Q14: IDEIA permits schools to include a copy of the NOPS on the school's website. Can a school do this instead of providing the NOPS to parents?

A: No. Putting a copy of the NOPS on a school's website is not a substitute to actually giving the NOPS to parents.

Q15: IDEIA allows a parent to receive the NOPS via e-mail if the option is available. Does Article 7 allow this?

A: Article 7 does not address whether the NOPS can be received via e-mail. Accordingly, this option will be available to LEAs on July 1, 2005. However, it is advisable, but not required, to have the parents acknowledge in writing that they will receive the NOPS via e-mail. It is also advisable, but not required, to request receipt of the e-mail by the parent, and save a hard copy of such receipt.

Questions Regarding Identification and Evaluation

Q16: IDEIA establishes a timeframe of 60 calendar days from parental consent to completion of an initial evaluation. However, 511 IAC 7-25-4(b) requires initial

evaluations to be completed and the CCC convened within 60 *instructional days.* Which timeframe will apply starting July 1, 2005?

A: Article 7's 60 *instructional* day timeframe will continue to be in effect on July 1st because IDEIA permits states to use an existing state timeframe rather than the IDEIA timeframe. *See,* 20 U.S.C. § 1414(a)(1)(C)(i).

Q17: IDEIA identifies two exceptions to its 60 calendar day evaluation timeline. First, the 60 day timeline does not apply where a child moves into the LEA from another LEA during the evaluation period, where no determination of eligibility has been made, and the parent/LEA agree to a timeframe to complete the evaluation. 20 U.S.C. § 1414(a)(1)(C)(ii)(I). Second, the 60 day timeframe is excused where the parent fails or refuses to produce the child for evaluation. Will these exceptions apply in Indiana on July 1, 2005?

A: No. Because Article 7 does not currently allow any exceptions to the 60 instructional day timeline for initial evaluations, such exceptions will not be available until Article 7 is amended to reflect this change.

Questions Regarding Eligibility Criteria

Q18: Do we still have to determine the existence of a severe discrepancy in order to find a student eligible as a student with a learning disability? IDEIA states that LEAs may not be required to consider whether the student has a severe discrepancy in determining the student's eligibility as a student with a learning disability and the LEA "may " use a process to determine whether a child responds to scientific research-based intervention as part of the evaluation procedures.

A: No. Under IDEIA, the Indiana Department of Education cannot require an LEA to find that a student exhibits a "severe discrepancy" between achievement and intellectual ability in at least one area to determine if a student has a learning disability. *See,* 20 U.S.C. § 1414(b)(6)(A). However, if an LEA eliminates the "severe discrepancy" eligibility criteria, it should eliminate it for every child that is evaluated. A "discrepancy" is still required. In essence, eligibility will be determined based on a discrepancy between achievement and intellectual ability that constitutes an adverse impact upon educational performance.

Questions Regarding Determination of Special Education Services

Q19: IDEIA permits members of the CCC to be excused from all or part of a CCC meeting if certain conditions are met. Will this be allowed in Indiana starting July 1, 2005?

A: No. Requisite CCC participants, as identified in 511 IAC 7-27-3 must continue to participate in CCC meetings until Article 7 is amended.

Q20: IDEIA allows the parent and the school, after the annual CCC meeting, to amend/modify the IEP with a written document without convening the CCC. Will my LEA be able to do this on July 1st?

A: No. Until Article 7 is amended, schools and parents must continue to meet in CCC meetings in order to change a student's IEP. *See,* 511 IAC 7-27-4(c).

Q21: IDEIA states that if a parent refuses to consent to special education and related services, the LEA may not provide services, nor can they use due process to override lack of parental consent. What happens if a parent fails to consent to change of placement or services? Is the LEA prohibited from changing the placement/services or overriding lack of consent via due process?

A: The proposed regulations interpreting IDEIA clearly indicate that the only time an LEA is prohibited from using due process to override lack of parental consent is for initiation of services. When a parent refuses to consent to the initiation of services, the LEA is not considered in violation of the requirement to make a free appropriate public education (FAPE) available to the student. Likewise, the LEA is not required to convene a CCC meeting or develop an IEP. 20 U.S.C. § 1414(a)(1)(D)(ii)(III). If a parent consents to the initiation of services and subsequently declines to consent to a change of placement or continuation of services, the LEA may use mediation or a due process hearing to resolve the lack of consent.

Q22: IDEIA eliminated the requirement of including benchmarks or short-term objectives as part of each annual goal included in a student's IEP, except for students who are assessed on an alternate assessment against alternate achievement standards. Can my LEA stop doing benchmarks beginning July 1st?

A: No. Until Article 7 is amended to reflect this change, IEPs must continue to include benchmarks or short-term objectives as part of the annual measurable goals required by 511 IAC 7-27-6(a)(2).

Q23: Did IDEIA change the information that must be included in progress reports sent home to parents each grading period?

A: No.

Q24: Does IDEIA require an LEA to implement the IEP of a student who transfers from out of state?

A: Yes. In addition to Article 7's requirement at 511 IAC 7-27-7(c)(3) that an LEA implement the IEP of a student transferring from another school district within Indiana , IDEIA requires LEAs, effective July 1st, to implement the IEP (provide services comparable to those described in the IEP) of a student transferring to an Indiana school from another state until a new evaluation is conducted (if necessary) and the CCC convenes to develop an IEP. 20 U.S.C. § 1414(d)(2)(C)(i).

Also note, IDEIA *requires the "receiving" school to take reasonable steps to promptly obtain the student's records from the previously attended school, and the previously attended school must take reasonable steps to promptly respond with the requested documents* 20 U.S.C. § 1414(d)(2)(C)(ii). State law also requires schools to take these steps. *See,* IC 20-33-2-10(d).

Q25: Is the Indiana Department of Education going to apply for permission to demonstrate the use of multi-year IEPs?

A: Yes. The Division plans to submit a proposal to the Secretary of the U.S. Department of Education to allow parents and LEAs the option of developing a comprehensive multi-year IEP not to exceed three years. Fifteen states will be chosen to participate in this pilot project. However, unless Indiana is chosen to participate in the pilot program, IEPs cannot be implemented for more than 12 months (unless the duration has been extended by operation of the stay-put provision of 511 IAC 7-30-3(j)).

Questions Regarding Transitions

Q26: IDEIA allows a child's Part C (First Steps) Individualized Family Service Plan (IFSP) to serve as a child's IEP if doing so is consistent with state policy. Does Indiana allow IFSPs to serve as IEPs?

A: No. Indiana's policy does not permit an IFSP to serve as an IEP.

Q27: Does IDEIA require LEAs to invite a Part C (First Steps) coordinator to a child's initial CCC meeting?

A: A Part C (First Steps) coordinator or other Part C services representative must be invited to the initial CCC meeting if the parent so requests. Additionally, the CCC must consider the child's IFSP. 20 U.S.C. § 1414(d)(2)(B).

Q28: IDEIA eliminated the requirement for transition planning beginning when a student turns 14 and replaced it with planning at the age of 16. It also eliminated the requirement of a statement of interagency linkages or responsibilities. Are these changes effective in Indiana on July 1st?

A: No. Until Article 7 is amended to reflect these changes, 511 IAC 7-28-3(a) continues to require that transition planning begin at age 14 or earlier if determined appropriate by the CCC. Likewise, 511 IAC 7-28-3(b) continues to require, as appropriate, a statement of interagency responsibilities or any needed linkages or both.

Q29: Do additional issues need to be addressed in transition planning, e.g., setting transition goals for all students at age 16?

A: In addition to the requirements of 511 IAC 7-28-3(b) of the statement of needed transition services, the transition plan *must include appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the student in reaching those goals***.** 20 U.S.C. § 1414(d)(1)(A)(i)(VIII). Federal regulations may provide more guidance in this area. However, this requirement is effective on July 1st.

Q30: What needs to be included in the summary of accomplishments and transition needs given to students as they exit secondary schools? Is this requirement effective July 1st?

A: IDEIA requires the LEA to *provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's post-secondary goals*. 20 U.S.C. § 1414(c)(5)(B)(ii). Federal regulations may provide more guidance in this area. However, this provision is effective on July 1, 2005.

Questions Regarding Discipline Procedures

Q31: IDEIA changed the length of time that an LEA may remove a student to an interim alternative educational setting (IAES) for offenses involving drugs, weapons, or serious bodily injury from 45 calendar days to 45 school days. Is this change effective on July 1st?

A: No. Forty-five school days is longer than the time permitted in Article 7 at 511 IAC 7-29-3(a), which is 45 calendar days. Accordingly, until Article 7 is amended to reflect this change, the 45-calendar day limit remains in effect.

Q32: IDEIA states at 20 U.S.C. § 1415(k)(1)(H) that, *Not later than the date on which the decision to take disciplinary action is made, the LEA shall notify parents of the decision and of all procedural safeguards accorded under this section.* Does this mean any disciplinary action or only disciplinary actions that result in a change of placement?

A: This provision relates only to disciplinary action that results in a change of placement (as in 34 CFR § 300.519). *See,* 511 IAC 7-29-1(k), 7-29-2(b), and 7-29-3(a) for disciplinary actions that constitute a change of placement.

Q33: Starting on July 1st, can an LEA remove a student receiving special education services to an interim alternative educational setting (IAES) for inflicting serious bodily injury on another person on school premises?

A: Yes. In addition to offenses related to weapons and drugs, set forth at 511 IAC 7-29-3(a), LEAs can remove a student to an IAES, effective July 1st, when the student has inflicted *serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA or LEA.* 20 U.S.C. § 1415(k)(1)(G). *Serious bodily injury* means *bodily injury which involves—*

(A) substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or
(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

18 U.S.C. § 1365(h)(3).

Q34: Under IDEIA's protections for students who are not yet eligible for special education services, the provisions related to whether the LEA should have known that a student was a student with disability have been changed to state that, *the school shall not be deemed to have knowledge that a student is a student with a disability if the parent has not allowed an evaluation of the student or has refused special education and related services.* 20 U.S.C. § 1415(k)(5)(C). On July 1st, must an LEA afford a student the disciplinary protections set forth in Article 7 if the student's parents refused to consent to an evaluation of the student or refused to consent to the initiation of special education and related services?

A: Yes. Until Article 7 is amended, an LEA must afford a student the disciplinary protections set forth in Article 7 if the student's parents refused to consent to an evaluation of the student or refused to consent to the initiation of special education and related services. Article 7 only lists two instances, set forth in 511 IAC 7-29-9(c), in which an LEA will *not* be deemed to have knowledge that a student is a student with a disability: (1) if the LEA after conducting an evaluation provided notice to the parents that the student did not have a disability and (2) if the LEA determined that an evaluation was not necessary and provided notice of such determination to the parents.

Q35: IDEIA limits the questions to be considered by the CCC in determining if a student's misconduct is a manifestation of the student's disability to: *(1) is the conduct in question caused by or does it have a direct and substantial relationship to the student's disability or (2) is the conduct in question the direct result of the school's failure to implement the IEP?* 20 U.S.C. § 1415(k)(1)(E). Is this change effective on July 1st?

A: No. Until Article 7 is amended, CCCs must, pursuant to 511 IAC 7-29-6(d)(2), consider the four questions identified in determining if the conduct is a manifestation of the student's disability.

Q36: The new provisions pertaining to due process in IDEIA are very confusing. Has any type of timeline been created to explain all of the new procedures and deadlines that follow when a request for a due process hearing has been filed?

A: Yes. The following charts depict all of the new timelines in IDEIA that become effective on July 1st: The first chart set forth the timelines applicable when a **PARENT** files a request for a hearing and the second chart sets forth the timeliness applicable when an **LEA** files a request for a hearing.

PARENT REQUEST FOR HEARING – TIMELINES EFECTIVE JULY 1, 2005

WITHIN 10 DAYS OF RECEIVING A REQUEST FOR A DUE PROCESS HEARING

- If it hasn't already done so, the LEA must provide prior written notice to the parents on the subject matter of the due process hearing request.

AND

- The LEA must provide a written response ("Answer") to the parent's due process hearing request specifically addressing the issues identified in the due process hearing request.

WITHIN 15 DAYS OF RECEIVING A REQUEST FOR A DUE PROCESS HEARING

- If the LEA believes that parent's due process hearing request does not meet the requirements of 20 U.S.C. § 1415(b)(7)(A), the LEA may send notice to the independent hearing officer and the parent of its belief. (A parent's request for a due process hearing will be deemed sufficient unless the LEA notifies the IHO and the parent in writing of the LEA's belief to the contrary.)
  - 20 U.S.C. § 1415(b)(7)(A) requires the parent's due process hearing request to include:
    - the name, address, and residence of the child (or available contact information for a homeless child)
    - the name of the school the child attends
    - a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem and
    - a proposed resolution to the extent known and available at the time.
  - Within 5 days of receiving the LEA's notice of insufficiency, the IHO must make a decision on the sufficiency of the parent's request for a due process hearing and immediately notify the parties in writing.

- The LEA must convene a meeting with the parent and relevant members of the CCC, including a public agency representative, to allow the parents to discuss the facts that form the basis of the hearing request and provide the LEA with an opportunity to resolve the issues.
  - LEA attorney may not attend unless parent's attorney attends
  - Meeting may be waived by mutual written consent of the LEA and the parent OR by agreement to mediate.

WITHIN 30 DAYS OF RECEIVING A REQUEST FOR A DUE PROCESS HEARING

- If the matter is not resolved to the parent's satisfaction, a due process hearing can proceed, and the 45-day timeline for the due process hearing begins.
- If the matter is resolved, the parties must execute a legally binding agreement, signed by both parties that shall be enforceable in court. Either party may void the agreement within 3 business days of executing the agreement.

WITHIN 45 DAYS OF THE DETERMINATION THAT THE MATTER HAS NOT BEEN RESOLVED TO THE PARENT'S SATISFACTION

- A hearing must be conducted and a written decision rendered unless the hearing officer grants a party's request for an extension of time.
- Mediation may occur during this time, but may not delay the timelines.

Note: Due process hearing timelines are CALENDAR days. The timelines for providing prior written notice, a response to the request for a hearing, and providing notice that a request does not comply with the stated requirements begin upon the receipt of the request for hearing by the IDOE. The 45-day timeline within which the due process hearing must occur does not begin until after the opportunity for a resolution meeting and the unsuccessful resolution within 30 days after receipt of the due process hearing request.

LEA REQUESTS HEARING – TIMELINES EFECTIVE JULY 1, 2005

WITHIN 10 DAYS OF RECEIVING A REQUEST FOR A DUE PROCESS HEARING

- The parent (or the parent's attorney) must provide a written response ("Answer") to the LEA's due process hearing request specifically addressing the issues identified in the due process hearing request.

WITHIN 15 DAYS OF RECEIVING A REQUEST FOR A DUE PROCESS HEARING

- If the parent (or the parent's attorney) believes that the LEA's due process hearing request does not meet the requirements of 20 USC §1415(b)(7)(A), the parent (or the parent's attorney) may send notice to the independent hearing officer and the LEA of its belief. (The LEA's request for a due process hearing will be deemed sufficient unless the parent (or the parent's attorney) notifies the IHO and the LEA in writing of the parent's belief to the contrary.)
  - 20 USC §1415(b)(7)(A) requires the LEA's due process hearing request to include:
    - the name, address, and residence of the child (or available contact information for a homeless child)
    - the name of the school the child attends
    - a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem and
    - a proposed resolution to the extent known and available at the time.
  - Within 5 days of receiving the parent's (or parent's attorney's) notice of insufficiency, the IHO must make a decision on the sufficiency of the LEA's request for a due process hearing and immediately notify the parties in writing.

WITHIN 45 DAYS OF THE DETERMINATION THAT THE MATTER HAS NOT BEEN RESOLVED TO THE PARENT'S SATISFACTION

- A hearing must be conducted and a written decision rendered unless the hearing officer grants a party's request for an extension of time.
- Mediation may occur during this time, but may not delay the timelines.

Note: Due process hearing timelines are CALENDAR days. The timelines for providing prior written notice, a response to the request for a hearing, and providing notice that a request does not comply with the stated requirements begin upon the receipt of the request for hearing by the IDOE. The 45-day timeline within which the due process hearing must occur does not begin until after the opportunity for a resolution meeting and the unsuccessful resolution within 30 days after receipt of the due process hearing request.

Q37: How has IDEIA changed mediation?

A: Any mediation agreement must continue to be put in writing, as required by Article 7 at 511 IAC 7-30-1(g). Additional requirements effective July 1st are that the written mediation agreement: *(1) is legally binding, (2) must state that all discussions occurring during the process shall be confidential and not used as evidence in any subsequent due process or civil proceeding, and (3) must be signed by the parent and the public agency representative. The agreement is enforceable in any court of competent jurisdiction.* 20 U.S.C. § 1415(e)(2)(F).

Q38: Will the new two-year statute of limitations on requests for due process hearings be in effect on July 1st or is it in conflict with any current Article 7 language?

A: The two-year statute of limitations on requests for due process hearings set forth in IDEIA is effective on July 1st.

Q39: Are there any exceptions to the two-year statute of limitations on requests for due process hearings?

A: Yes. There are two exceptions that allow parents to raise issues beyond the two-year statute of limitations: (1) if the school made specific misrepresentation that it had resolved the matter, and (2) if the school withheld information required to be provided to the parent. 20 U.S.C. § 1415(f)(3)(D).

Q40: Under what circumstances may a party seek attorney fees under IDEIA?

A: Under Article 7, parents who prevail in a due process proceeding can seek attorney fees. *See*, 511 IAC 7-30-4(p). Effective July 1st, the LEA or the Indiana Department of Education may seek attorney's fees against a parent's attorney if the parent's attorney requests a hearing or files a subsequent cause of action that is frivolous, unreasonable, or without foundation or if the parent's attorney continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation. The LEA and the Indiana Department of Education may also seek attorney's fees from the parent's attorney or the parent if the request for a hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. 20 U.S.C. § 1415(i)(3)(B)(i)(II) and (III).

> **Note:** Attorney fees may not claimed for the resolution session required by IDEIA. 20 U.S.C. § 1415(i)(3)(D)(iii).

Q41: How would an LEA collect attorney fees from a parent for frivolous due process filings that the parents lost? Would an LEA have to go to court to do this?

A: Because independent hearing officers do not have the authority to award attorney fees, the LEA would be required to make its case in court that it was entitled to its attorney's fees because the hearing request or similar action was frivolous, unreasonable, or without foundation or because the request for a hearing or similar action was made for an improper purpose.

Q42: IDEIA provides a 90-day timeline for appealing the decision of the Board of Special Education Appeals (BSEA) to a state or federal district court. Will this timeline be effective on July 1st?

A: No. The IDEIA timeline is applicable unless a state already has a timeline in place. *See*, 20 U.S.C. § 1415(i)(2)(B). 511 IAC 7-30-4(n) sets forth the 30-day timeline contained in the State of Indiana's Administrative Orders and Procedure Act (AOPA), 4-21.5-5-5, for appealing a BSEA decision.

IDEIA QUESTIONS INDIRECTLY RELATED TO ARTICLE 7

Q1: Can an LEA use a limited percentage of its Part B funds to serve students who have not yet been identified as eligible for special educations services?

A: Yes. LEAs are permitted develop and implement coordinated early intervening services that may include interagency financing structures for students in kindergarten through twelfth grade (with a particular emphasis on students in kindergarten through third grade) who have not been identified as needing special education or related services, but who need additional academic and behavior support to succeed in the general education environment. The activities may include: (1) professional development to enable staff to deliver scientifically-based academic instruction and behavioral interventions and instruction on the use of adaptive and instructional software; and (2) providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction. 20 U.S.C. § 1413(f).

> **But note:** While LEAs can use earmarked early intervening service dollars to *supplement* state, local, and other federal funds, the early intervening service dollars cannot *supplant* these funds. 20 U.S.C. § 1413(f).
>
> **Also note:** The Division is developing a statewide project utilizing three existing LEA pilots and a team of experts to establish best practices for response to intervention (RTI) throughout the state. The Division is taking a proactive approach to develop a plan to address the early identification of reading disabilities and to develop reading intervention programs.

Q2: The IDEIA permits the Indiana Department of Education (IDOE) to reserve a percentage of its Part B funds to establish and make disbursements to LEAs to address the needs of "high need children with disabilities." Does the IDOE intend to implement a

"high need" pool by developing and implementing a state plan in accordance with the requirements of 20 U.S.C. § 1411(e)(3)(C)?

A: The Division will not be developing a formal state plan to disburse a percentage of its Part B funds to LEAs on an individual student basis. Instead, the Division intends to add these funds to LEA's pass-through grants. LEAs have the option of using these funds to help defray the costs of providing special education and related services to "high need children with disabilities"; however, the LEA is not required to use these funds for this purpose.

Q3: Under new language of the IDEIA, the Indiana Department of Education may develop a policy that allows parents of students receiving services under Part C Early Intervention Services (First Steps) to choose to continue the Part C services until the student becomes eligible to enroll in kindergarten. 20 U.S.C. §§ 1412(a)(1)(C) and 1435(c). Will the IDOE develop a policy that allows children to receive Part C Early Intervention (First Steps) services until kindergarten?

A: The Division does not anticipate developing a policy to permit Part C Early Intervention (First Steps) services to continue after a child's third birthday.